

**United States Department of Labor  
Employees' Compensation Appeals Board**

J.C., Appellant	)	
	)	
and	)	<b>Docket No. 14-1673</b>
	)	<b>Issued: November 14, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bellmawr, NJ, Employer	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 28, 2014 appellant, through counsel, filed a timely appeal of a May 9, 2014 Office of Workers' Compensation Programs' (OWCP) merit decision denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof in establishing that she sustained a traumatic injury on August 9, 2013 in the performance of duty.

On appeal, counsel argued that a *prima facie* traumatic injury claim has been established or that OWCP abused its discretion in failing to develop the matter further from a medical standpoint.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On August 12, 2013 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim alleging that on August 9, 2013 she injured her back while bending over to lift a tray of mail at the employing establishment. She stated that she felt something move in her back. Appellant's attending physician, Dr. Mark Filippone, a Board-certified physiatrist, recommended physical therapy on August 14, 2013. Dr. Filippone completed a form report on the same date and diagnosed lumbar radiculitis.

In a letter dated September 4, 2013, OWCP requested additional factual and medical evidence in support of appellant's claim. Dr. Filippone completed a report dated August 14, 2013 and noted her history of bending and lifting in the performance of duty and experiencing a pop in her back. He noted that appellant was involved in a motor vehicle accident in 2008 which resulted in epidural steroid injections of the low back and neck. Dr. Filippone stated that she returned to full-time regular duty following the 2008 accident. On physical examination he found that appellant had low back pain with radiation into the left lower extremity with flexion at the waist. Dr. Filippone stated that she experienced more pain on the left side of her back. He diagnosed acute injury to the lumbosacral spine directly and opined that this condition was solely the result of the employment injuries on August 9, 2013. Dr. Filippone completed a form report on September 4, 2013 and diagnosed acute injury to the lumbar spine and indicated with a checkmark "yes" that he believed that this condition was caused or aggravated by an employment activity.

A magnetic resonance imaging (MRI) scan dated August 13, 2008 demonstrated left lateral disc herniation at L4-5 and central disc herniation at L5-S1. An MRI scan of the cervical spine on August 13, 2008 demonstrated cervical spondylosis at C5-6 and disc bulges from C4-7. Appellant's thoracic spine MRI scan on August 31, 2008 demonstrated small central disc protrusion at T7-8 and T8-9. Chest x-rays dated August 10, 2008 demonstrated a compression fracture at T9. A computerized tomography (CT) scan of appellant's chest demonstrated a probable rib fracture. Appellant underwent a bone scan on August 22, 2008 which demonstrated abnormal mid right rib anteriorly and abnormal sternum which were likely probable fractures.

Appellant submitted a narrative statement dated August 31, 2013 and described her employment. She noted her motor vehicle accident on August 10, 2008. Appellant stated that she pulled something in her back while working on August 9, 2013. In a statement dated August 10, 2013, appellant reported on August 9, 2013 she bent over to pick up a delivery point sequence, a foot-long tray of letters, when she felt something pull in her lower back. She stated that she felt sore, but continued to work. Appellant reported the incident to her supervisor and proceeded with her duties. She stated that as the day progressed the pain worsened in her back and traveled from her hip down into her knee and ankle. Appellant utilized leave on August 10, 2013.

By decision dated October 8, 2013, OWCP denied appellant's claim finding that she had not submitted medical evidence of a specific condition resulting from the August 9, 2013 employment incident. It found that Dr. Filippone's diagnoses of acute injury to the lumbosacral spine was not sufficient to meet her burden of proof.

Appellant requested an oral hearing before an OWCP hearing representative on October 15, 2013. In a report dated October 7, 2013, Dr. Filippone diagnosed lumbar spine trauma. He indicated with a checkmark “yes” that he believed that appellant’s diagnosed condition was due to her employment activity. Dr. Filippone completed narrative reports on September 4 and October 7, 2013 and noted her complaints of low back pain. He requested authorization for an MRI scan and electrodiagnostic testing. Dr. Filippone completed a report on October 31, 2013 and diagnosed cervical radiculopathy, occipital headache, internal derangement of the shoulders, elbows and wrists and lumbar radiculopathy. He stated, “In my professional medical opinion, it is well within reasonable medical probability that all of the patient’s present complaints and physical abnormalities are directly and solely the result of the injury sustained while at work on August 9, 2013....”

Appellant underwent an MRI scan of the lumbar spine on October 22, 2013 which demonstrated disc desiccation and an annular tear at L3-4, with disc bulges at L4-5 and L5-S1. Dr. Filippone reviewed this test on November 8, 2013 and attributed appellant’s condition to her acute low back injury. In a report dated December 5, 2013, he found her condition unchanged. On January 9, 2014 Dr. Filippone noted that appellant reported back pain rated 7 of 10 radiating into the left lower extremity and down into the left foot. He found pain, guarding and spasm in the lumbar paraspinals. Dr. Filippone noted that appellant’s prior low back condition had resolved completely such that she was able to return to regular full-time duty.

Appellant testified at the oral hearing on February 19, 2014. She noted a preemployment back injury in 1987 which did not interfere with her position as letter carrier. Appellant noted that her mail bag averaged 30 pounds and that she was required to lift up to 75 pounds. She described the 2008 motor vehicle accident which was not related to her employment. Appellant stated that she was out of work for five weeks with neck and low back pain. She then returned to full duty. On September 27, 2008 appellant sustained a work-related right knee meniscus tear due to twisting her knee while walking down steps in the performance of duty. She again returned to full duty and was in full-duty status on August 9, 2013 when she injured her back. Appellant stated that she bent down to lift up the tray of DPS and felt something move in her back. She experienced soreness and tightness, reported the incident to her acting supervisor and continued to work. Appellant stated that the pain increased and that she could not take normal size steps. She had difficulty locating a physician that would accept workers’ compensation cases and eventually visited Dr. Filippone on August 14, 2013.

Dr. Filippone completed a report on February 18, 2014 and reviewed appellant’s electrodiagnostic studies. He found a partial denervation in muscles innervated by the L5-S1 lumbosacral nerve roots bilateral and to a lesser extent in muscles innervated by the left L3-4 lumbar nerve roots. Dr. Filippone concluded that appellant had electrodiagnostic evidence of left L3-4 and L5-S1 lumbosacral radiculopathy and right L5-S1 lumbosacral radiculopathy. He opined, “In my professional medical opinion, the above abnormalities are totally consistent with the injuries sustained at work ... and it is consistent with the pathology noted on the MRI of the lumbar spine....” Dr. Filippone also examined appellant on February 26 and March 24, 2014.

By decision dated May 9, 2014, an OWCP hearing representative found that Dr. Filippone’s reports were not sufficiently rationalized to meet appellant’s burden of proof.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of FECA and that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

OWCP defines a traumatic injury as, “[A] condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain which is identifiable as to time and place of occurrence and member or function of the body affected.”<sup>5</sup> To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First the employee must submit sufficient evidence to establish that he and she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit sufficient evidence, generally only in the form a medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

A medical report is of limited probative value on a given medical question if it is unsupported by medical rationale.<sup>8</sup> Medical rationale includes a physician’s detailed opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment activity. The opinion of the physician must be based on a complete factual and medical background of the claim, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment activity or factors identified by the claimant.<sup>9</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(ee).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>8</sup> *T.F.*, 58 ECAB 128 (2006).

<sup>9</sup> *A.D.*, 58 ECAB 149 (2006).

## ANALYSIS

OWCP accepted that appellant sustained an employment incident on August 9, 2013, during which she stated that she pulled something in her back while bending over to pick up a DPS, but found that she had not submitted sufficient medical evidence to establish that this incident resulted in an employment-related back condition.

The medical evidence consists of a series of reports from Dr. Filippone, who first examined appellant on August 14, 2013 and diagnosed lumbar radiculitis. Dr. Filippone noted that appellant was involved in a motor vehicle accident in 2008. The record contains an MRI scan dated August 13, 2008 demonstrated left lateral disc herniation at L4-5 and central disc herniation at L5-S1. Dr. Filippone diagnosed acute injury to the lumbosacral spine and opined that this condition was solely the result of the employment injuries on August 9, 2013. He completed form reports and indicated with a checkmark “yes” that he believed that appellant’s current back condition was caused or aggravated by an employment activity.

The Board finds that these reports are not sufficient to meet appellant’s burden of proof in establishing a traumatic injury claim. Dr. Filippone did not explain how or why he believed that appellant’s current lumbar condition was due to her bending and lifting incident at work given the severity of her preexisting spine injuries in 2008. It is not clear that his report was based on a complete medical history including the previously diagnosed herniated discs as found on the 2008 MRI scan. Without a detailed medical history and medical reasoning explaining how bending and lifting a tray of mail could cause or aggravate appellant’s lumbar spine conditions, these reports cannot establish appellant’s claim. The Board has held that an opinion on causal relationship which consists only of a physician checking “yes” to a medical form report question on whether the claimant’s condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>10</sup>

On October 31, 2013 Dr. Filippone diagnosed lumbar radiculopathy and stated, “In my professional medical opinion, it is well within reasonable medical probability that all of the patient’s present complaints and physical abnormalities are directly and solely the result of the injury sustained while at work on August 9, 2013.” This report again fails to address appellant’s prior diagnostic studies and fails to explain the factual and medical basis for Dr. Filippone’s opinion.

Following appellant’s October 22, 2013 lumbar MRI scan which demonstrated disc desiccation and an annular tear at L3-4, with disc bulges at L4-5 and L5-S1, Dr. Filippone noted that appellant’s prior low back condition had resolved completely such that she was able to return to regular full-time duty. He also concluded that she had electrodiagnostic evidence of left L3-4 and L5-S1 lumbosacral radiculopathy and right L5-S1 lumbosacral radiculopathy. Dr. Filippone opined, “In my professional medical opinion, the above abnormalities are totally consistent with the injuries sustained at work ... and it is consistent with the pathology noted on the MRI scan of the lumbar spine....” These reports do not address the central issue, whether the employment incident on August 9, 2013 of bending and lifting a tray of mail was sufficient to

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<sup>10</sup> *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

cause or aggravate appellant's lumbar spine so as to result in the current diagnoses. Dr. Filippone stated that appellant's conditions were consistent with her work and that her 2008 condition had resolved such that she could return to work, but he did not explain how the 2008 condition had resolved based on diagnostic studies and further did not explain the process by which bending and lifting could and did result in the diagnosed lumbar radiculopathy. Without medical rationale, his reports supporting causal relationship are not sufficient to meet her burden of proof.

Counsel argued on appeal that appellant had established her claim or, in the alternative, that OWCP failed to adequately develop the medical evidence in the record. For the reasons listed above, the Board finds that the medical evidence did not include the necessary factual and medical history and the needed medical reasoning to meet her burden of proof or to require further development by OWCP.

### **CONCLUSION**

The Board finds that appellant has not submitted the necessary rationalized medical opinion evidence based on a proper factual background to meet her burden of proof in establishing that she sustained lumbar radiculopathy as a result of her August 9, 2013 employment incident.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board